

Do Dell Directors Want Responsibility for Investor Decisions?

As reported last week, Dell's legal officer has continued to argue that the company is not obligated to respond to stockholder information demands because investors should rely upon the company's board to disclose what is relevant to investor decisions.¹ I have therefore offered to withdraw the demand for records if the company's directors are actually willing to accept the fiduciary duty suggested by this legal theory.

The text of my letter is copied [below](#).

Conventionally, directors have been relied upon to assure compliance with reporting requirements and fair disclosure of material information, and it is assumed that nobody questions the practical wisdom of that well established duty. What Dell now argues is that the board should also be relied upon to determine what every investor needs to know, and that investors should therefore give up their right to ask questions and get answers.

It is unlikely that this suggested shift in responsibilities would be welcomed by most corporate directors or by most investors, especially considering the impracticality of a board's determining the different objectives of each company stockholder.² Forum participants with a wide range of perspectives have told me that a company's board "can't be expected to read my mind;" that no corporate director wants to be burdened with trying to do so; and that beyond this "implicit limitation of a board's ability to know" the interests of each investor, our marketplace depends on the "investor right to seek clarification, and to verify what is reported."

The first test of this new theory is with Dell's board. Its members must now make a simple choice: *either accept responsibility for investor decisions or respect investor rights to make their own decisions.*

GL – April 3, 2013

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¹ See [March 28, 2013 Forum Report: Dell Continues Disputing Obligation to Provide Information](#) and [March 21, 2013 Forum Report: Getting the Information Before Instead of After Investor Decisions](#), and the referenced previous reports.

² See [February 28, 2013 Forum Report: Range of Dell Investor Information Requirements](#).

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April 2, 2013

By email and postal service

Mr. Michael S. Dell
Chairman, Board of Directors
and

Mr. Alex J. Mandl
Presiding Director and Chairman of the Special Committee, Board of Directors
Dell Inc.
One Dell Way
Round Rock, Texas 78682

Dear Messrs. Dell and Mandl:

Dell's Vice President – Corporate, Securities & Finance Counsel, Janet B. Wright, has argued in recent letters¹ that the company is not obligated to respond to information demands I have been authorized to make on behalf of a stockholder.² Although most of Ms. Wright's points can be easily resolved by lawyers, her substantive argument presents a question that can be answered only by Dell's board of directors.

According to Dell's legal theory, the company is not obligated to respond to the demand for information because a stockholder should rely upon Dell's board to determine what information is needed for that stockholder's consideration of the board's proposed transaction. This view would necessarily make the board responsible for determining the particular investor objectives of each and every company stockholder, and of each stockholder's associated decision-making criteria and information requirements. That is a very significant expansion of board responsibility beyond the conventional limits of determining the interests of the corporation. I must therefore ask whether the members of Dell's board will in fact accept this new fiduciary duty.

If you inform me that Dell's directors are assuming the fiduciary duty to determine each stockholder's interest, I will respect their responsibility and withdraw my demand for records. Otherwise, I will welcome discussions of confidentiality provisions and procedural arrangements that will allow a Dell stockholder to get answers to its own questions and assume independent responsibility for its own interest.

Sincerely yours,

Gary Lutin,
as Delegate

cc: Ms. Janet B. Wright

¹ See Ms. Wright's letters of [March 12](#) and [March 15, 2013](#), which were published by Dell in SEC Schedule 14A reports of proxy solicitation material on [March 12](#) and [March 15](#), and her letter of [March 28, 2013](#).

² See my [March 21, 2013 letter](#) presenting "Revised demands for records."